



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: HOfs14050376
[REDACTED]

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,

v.

DONALD & JACQUELINE BOYER,
Respondents,

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following finding with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On May 19, 2014, [REDACTED] ("Complainant") filed a Complaint with the Commission against Donald and Jacqueline Boyer ("Respondents") alleging discrimination on the basis of familial status in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et seq.*), the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The first issue before the Commission is whether Respondent refused to rent to Complainant because of her familial status. In order to prevail on such a claim, Complainant must show that 1) she is a member of a protected class; 2) Complainant was qualified, ready, willing, and able to rent in a manner consistent with Respondents' reasonable terms and conditions; 3) Complainant made a bona fide offer to rent from Respondents; 4) Respondents refused to rent to Complainant; and 5) after refusing to rent to Complainant, the property remained available or Respondents rented to a less qualified individual without children.



It is evident that Complainant is a member of a protected class because she resides with a child under the age of 18; however, there is insufficient evidence to show that she was qualified to rent from Respondents or that she made a bona fide offer to rent from Respondents. Moreover, no evidence has been submitted or uncovered to show that Respondents rented the property to a less qualified individual.

By way of background and at all times relevant to the Complaint, Complainant was searching for a residence for herself and her daughter who is under the age of 18. Complainant alleges that on or about April 11, 2014, she called regarding a two bedroom duplex with garage located at 21851 CR 14, Elkhart, Indiana. Complainant claims that she set up an appointment to view the property on or about Monday, April 14, 2014; however, the day prior to the appointment, Complainant spoke with an individual named "Judy" who informed her that the appointment was canceled as Respondents were not interested in renting to individuals with children. While evidence shows that the Judy in question is likely Respondents' real estate assistant, Respondents assert they are unsure whether Complainant inquired into the property in question as they received numerous inquiries around the same time period. Moreover, Judy asserts she does not recall Complainant inquiring about the property.

Despite Complainant's assertions, there is insufficient evidence to show that Complainant was denied an opportunity to rent. While Respondents have an informal application process, Complainant admits that she never made a bona fide offer to rent. Further, no evidence has been provided or uncovered to show that Complainant was qualified to rent the properties from Respondents or that less qualified individuals were permitted to rent the premises. As such and based upon the aforementioned, there is no reasonable cause to believe that Complainant was denied an opportunity to rent.

Complainant may appeal the no reasonable cause finding regarding the first issue to the full Commission. 910 IAC 1-3-2(g). The written appeal must be filed with the Commission within fifteen (15) days of receipt of this Notice and must include any new and additional evidence relied on by Complainant to support the appeal. However, reasonable cause exists with respect to the second issue posed before the Commission.

As such, the second issue before the Commission is whether Respondents made discriminatory statements demonstrating a preference for applicants without children. During the course of the instant investigation, Respondents admitted to the Commission that they prefer to rent their two-bedroom, 1000 square foot duplexes to tenants with two or fewer children. Moreover, Respondent admitted that they preferred the children to be of the same sex and age because "he would not want teenage...children sharing the same room." Moreover, evidence shows that Respondent has only rented units to tenants with two or fewer children.

Despite Respondents' assertions, there is sufficient evidence to show that a discriminatory practice occurred in this instance. Specifically, the law prohibits the "publication, posting, or mailing of a notice, a statement, or an advertisement prohibited under Ind. Code § 22-9.5-5-2."

Moreover, Respondents' statements clearly show a preference for renters without children, creating a disparate impact on potential tenants with children. As such and based upon the aforementioned, reasonable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, and/or Title VIII of the Civil Rights Act of 1968, as amended, occurred in the aforementioned case. As permitted by 910 IAC 2-6-6(h), Respondents, Complainant, or an aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and served on the Director, the Respondents, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, Respondents shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. Tiffany Northam and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If, at any time following service of this charge, Respondents intend to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondents must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

November 18, 2014

Date

Jamal L. Smith
Executive Director
Indiana Civil Rights Commission